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VIA HAND DELIVERY AND ELECTRONIC FILING (ECFS)

REDACTED – FOR PUBLIC INSPECTION

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: ***Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach Metropolitan Statistical Areas,*** **WC Docket No. 06-172**

Dear Ms. Dortch:

XO Communications, LLC ("XO"), through counsel, submits this written *ex parte* to respond to Verizon's claim that it has been disadvantaged because competitive local exchange carriers ("CLECs"), such as XO, allegedly have failed to submit any data in this docket showing competitive activity in the six markets at issue. Verizon's "no data" claim is nothing more than an empty slogan intended to divert attention from the plain fact that Verizon is unable to meet its burden of producing sufficient evidence to support its Petitions. This is neither Verizon's nor any other carrier's fault, as the level of facilities-based competition that was found by the Commission to be present in certain Omaha or Anchorage wire centers simply does not exist in the markets at issue here.

XO Has Provided Data Demonstrating the Level of Facilities-Based Competition

The assertion that XO and others have failed to provide any data reveals either a degree of ignorance or willful misrepresentation that is alarming. The record shows that XO has from the very beginning been forthcoming with data regarding facilities-based competition in the markets at issue. The initial comments filed by XO along with several other CLECs contained GeoResults data revealing the extent of facilities-based presence in the markets at issue.[1]

> Indeed, in its Comments, XO disclosed that such data show that:
>
> [F]or five of the six MSAs at issue, the highest percentage of CLEC Lit Buildings in any wire center is *less than 1.5%*. In only one MSA, Virginia Beach, does CLEC Lit Building penetration exceed that percentage, and in the Virginia Beach MSA the wire center with the highest penetration level is a mere 4.29%.[2]

XO provided the following table in its Comments, based on GeoResults data, to demonstrate the dearth of CLEC Lit Buildings in the markets at issue.[3] This table shows the wire center in each market with the *highest* CLEC Commercial Lit Building penetration.

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1 *See Petitions of the Verizon Telephone Companies for Forbearance Pursuant to 47 U.S.C. § 160 in the Boston, New York, Philadelphia, Pittsburgh, Providence, and Virginia Beach Metropolitan Statistical Areas*, WC Docket No. 06-172, Comments of Broadview Networks, Inc., Covad Communications Group, NuVox Communications and XO Communications, LLC, at 46-49 (filed Mar. 5, 2007) ("XO, et al. Comments").

2 XO, et al. Comments, at 47.

3 *Id.*, at 48.

TABLE 1			
Wire Centers in Each MSA With Highest % of CLEC Lit Buildings	**Commercial Buildings**	**Commercial CLEC Lit Buildings**	**% Commercial CLEC Lit Buildings**
Boston WLHMMAWE	1,007	15	1.49%
New York NYCMNYBS	4,008	44	1.07%
Philadelphia PHLAPALO	4,676	32	0.68%
Pittsburgh PITBPADT	4,137	45	1.09%
Providence PRVDRIWA	8,129	79	0.97%
Virginia Beach NRFLVABL	1,654	71	4.29%

XO also supplied data with respect to the number of wire centers in each MSA in which there are *no* CLEC Commercial Lit Buildings. This data, provided in table form and reproduced below,[4] shows a similarly dramatic paucity of facilities-based competition for enterprise customers.

[4] *Id.*, at 49.

TABLE 2			
MSA	**Number of Wire Centers**	**Number of Wire Centers With No CLEC Lit Fiber**	**% of Wire Centers With No CLEC Lit Fiber**
Boston	131	69	53%
New York	115	52	45%
Philadelphia	156	78	50%
Pittsburgh	149	114	77%
Providence	33	11	33%
Virginia Beach	58	16	28%

As the tables included above demonstrate, "at least one-third of all wire centers in five of the six MSAs have no CLEC lit fiber and in one MSA, Pittsburgh, nearly 80% of all wire centers have no CLEC lit fiber presence in any Commercial Buildings."[5]

Data Submitted by Verizon Confirms the Accuracy of XO's Data

More than a year after it filed its Petitions, Verizon also submitted GeoResults-based data and *other* data that does nothing more than confirm the lack of sufficient facilities-based competition in the affected markets. Notably, Verizon chose not to use GeoResults-based data for AT&T and "another competitor", presumably Qwest. This selective substitution of data calls into question the credibility of the non-GeoResults-based data submitted by Verizon.[6] Indeed, the data submitted with respect to Qwest by Verizon is undoubtedly wrong. According to the data Verizon submitted, Qwest alone represents nearly 40% of the facilities-based competitive presence in five of the six markets (Virginia Beach excluded). Moreover, the data

5 *Id.*

6 In the absence of declarations that the numbers presented accurately represent on-net "Type I" fiber loop facilities, the Commission should discard the evidence presented with respect to AT&T and Qwest as being unsupported and therefore unreliable.

submitted by Verizon for Qwest is for each market exponentially higher than the corresponding GeoResults figure and, tellingly, exponentially higher than the number of buildings to which Qwest actually claims to offer wholesale service.[7]

In contrast to the non-GeoResults data submitted by Verizon, XO can confirm that Verizon's submission of GeoResults-based data pertaining to XO is reasonably accurate and reliable. As shown in the following table, XO, based on its own records, is able to confirm that the GeoResults data is better than 90% accurate.

TABLE 3

MSA	GeoResults Number of XO Lit Buildings[8]	Confirmed Number of XO Lit Buildings
Boston	34	24
New York	50	53
Philadelphia	40	50
Pittsburgh	7	15
Total	**131**	**142**

The eleven building (8%) difference between the GeoResults data and actual XO's total number of lit buildings in these markets simply is not material. And for purposes of the broader issue

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7 A table setting forth the Verizon-provided Qwest figures, along with data derived from actual Qwest wholesale offerings and GeoResults data for Qwest is included as Exhibit A to this ex parte letter.

8 XO's and Verizon's GeoResults data is different for each of these markets. This is likely attributable in part to the timing of the GeoResults data dip performed for each company. Also, XO had its figures scrubbed and produced by GeoResults whereas it is our understanding that Verizon arrived at its figures by accessing the underlying database itself. For purposes of this table, XO used the higher of the two GeoResults figures for each market.

before the Commission, it is worth highlighting that the total number of buildings served by XO in each market also is not material. As the following table shows, XO's current facilities-based Lit Building market penetration is less than 0.02% in each market.

TABLE 4

MSA	Commercial Buildings	Confirmed Number of XO Lit Buildings	% Commercial XO Lit Buildings
Boston	192,227	24	0.01%
New York	446,122	53	0.01%
Philadelphia	217,725	50	0.02%
Pittsburgh	85,694	15	0.01%
Providence	56,927	0	0%
Virginia Beach	72,229	0	0%
Total	1,070,924	142	0.01%

Aside from using what appears to be erroneous data regarding Qwest and unsupported data regarding AT&T, Verizon's exhibits purporting to show the "Number of Known Buildings to Which Competitive Carriers Have Deployed Fiber-Based Equipment in Verizon ILEC Territory" contain several other easily discernable flaws. First, the total at the bottom of each exhibit is not in any way representative of the total number of CLEC Lit Buildings in each market. As Verizon alludes to in the parenthetical it includes on the exhibit, the total provided is not the number of CLEC Lit Buildings but rather is a number that appears to represent the number of instances where an entity other than Verizon has deployed fiber equipment to a building.

Second, the Verizon-supplied lists clearly include entities that are not competitive carriers. For example, the list for the New York MSA includes Computer Associates, Federal Express, Gillette, Motorola, Pfizer, and Trans World Airlines. These entities make software, overnight deliveries, razors, cell phones, and hospital equipment, respectively – the last is an

airline that went out-of-business six years ago. They are not competitive carriers. The lists are further over-inclusive because they include some carriers (*e.g.*, Arbros) that, to the best of our knowledge, have gone out of business or are not certificated by the relevant state commission.

The result of these flaws is that *Verizon's submission does not show what it purports to show*. It does not show the number of buildings to which competitive carriers have deployed fiber-based equipment in the relevant Verizon markets. Instead, it appears to show the number of times an entity other than Verizon has deployed such equipment. And even then, the figures are suspect and certainly inflated. Indeed, the corresponding GeoResults data for "CLEC Appearances", or the number of times CLECs have deployed fiber to any building (allowing the counting of a single building multiple times), is markedly lower than that provided by Verizon. While this difference is largely attributable to the unverified and unsupported numbers provided by Verizon for AT&T and Qwest, it is notable that the GeoResults CLEC Appearance data suggest a much more modest level of competitive entry than the corresponding number (which is itself quite modest) provided by Verizon. The following table sets out the Verizon and GeoResults data for CLEC Appearances by market and, for an appropriate frame of reference, includes the GeoResults data for CLEC Lit Buildings (no building counted more than once) in each market.

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TABLE 5			
MSA	**VZ Reported "Carrier-Building Instances"**	**GeoResults CLEC *Appearances* (including MCI)**	**GeoResults CLEC *Lit Buildings* (including MCI)**
Boston	[redacted]	492	234
New York	[redacted]	970	429
Philadelphia	[redacted]	564	320
Pittsburgh	[redacted]	252	162
Providence	[redacted]	271	233
Virginia Beach	[redacted]	1,540	1,395

Total	[redacted]	4,089	2,773

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To provide further context, the following table sets forth the number of commercial buildings in each market (according to GeoResults) and the number of CLEC Lit Buildings (according to GeoResults) and the corresponding percentage of CLEC penetration, which ranges from a low of 0.09% in the New York MSA to a high of 1.9% in Virginia Beach. Notably, Virginia Beach is the only market where the percentage of CLEC Lit Buildings exceeds a fraction of one percent.

TABLE 6

MSA	Commercial Buildings	Commercial CLEC Lit Buildings	% Commercial CLEC Lit Buildings (including MCI)
Boston	192,227	234	0.12%
New York	446,122	429	0.09%
Philadelphia	217,725	320	0.14%
Pittsburgh	85,694	162	0.18%
Providence	56,927	233	0.40%
Virginia Beach	72,229	1,395	1.9%
Total	1,070,924	2,773	0.25%

Additional XO Data is Consistent with Data Previously Filed

As XO and others have previously stated, Verizon's submission of lists of wholesale providers and fiber route maps provides little in the way of evidence upon which the

Commission may reasonably rely in making its decision on Verizon's Petitions.[9] To provide the Commission with reliable data, XO has produced industry-wide and XO-specific tables showing the number of buildings in the six MSAs for which Verizon is seeking forbearance that are being served today by facilities-based competitors. That data has been set forth in the previous sections of this letter. In response to Verizon's claim that lit building data does not take into account locations that competitive carriers could reasonably serve with the deployment of additional fiber or equipment, XO submits the following table, which provides XO-specific addressable building data. This table provides percentage figures for buildings within 500 and 1,000 feet of XO's network.[10] The figures were calculated using XO data for "near-net" buildings and total MSA commercial building counts from GeoResults.

TABLE 7

MSA	% of Total Commercial Buildings Within 500 ft. of XO facilities	% Within 1000 ft.
Boston	0.7%	1.6%
New York	1.9%	4.2%
Philadelphia	2.7%	6.0%
Pittsburgh	0.8%	1.7%

The percentages in Table 7 indicate the *maximum theoretical reach* of XO's network. The reality, however, is that these numbers are overstated and that XO could not reach all buildings within 1,000 or even 500 feet of its network in a commercially-reasonable manner. Whether or not XO could build laterals to these buildings would depend greatly on building demand, as well as other factors such as building access and specific loop plant build characteristics.[11] But, even if it were assumed that XO could reach 100% of these near-net

9 Letter to Marlene H. Dortch, Secretary, FCC, from Brad Mutschelknaus, Kelly Drye & Warren LLP for XO et al., et al., WC Docket No. 06-172, at 7-8 (filed Sept. 4, 2007).

10 XO's experience is that in almost all instances, it is uneconomic (*i.e.*, build costs are too high to allow XO to price competitively and to achieve a reasonable return in a reasonable timeframe) to consider building a loop lateral longer than 1,000 feet.

11 XO provides retail services and wholesale services and, in so doing, seeks to leverage its extensive network investments and judiciously allocate its capital expenditure budget. In determining whether to light a building or not, loop length generally needs to be short and demand high. XO's average lateral installation is a mere 500 feet. Moreover, XO does

buildings in a commercially reasonable amount of time, the total theoretical "coverage" or addressable reach of XO's network ranges from a low of 1.6% in Boston to a high of 6% in Philadelphia. Further, since XO is one of the top competitive providers in each of these markets and competitors' facilities often have overlapping coverage areas, the overall amount of "coverage" by all competitors in these markets is not likely to be substantial.

Conclusion

As demonstrated herein, Verizon's claim that CLECs have submitted "no data" is nothing more than a slogan that is plainly inaccurate. To date, XO and others have submitted ample data. Verizon's real problem is that there simply is no data available to support its forbearance requests. Accordingly, the "noise" created by Verizon with respect to CLEC data should now promptly give way to the well supported and reasoned conclusion that there is "no evidence" to support grant of Verizon's Petitions.

Respectfully submitted,

John Heitmann

John J. Heitmann
Counsel for XO Communications, LLC

cc: Chairman Kevin Martin
Commissioner Michael Copps
Commissioner Jonathan Adelstein
Commissioner Deborah Tate
Commissioner Robert McDowell
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not even consider the construction of a lateral in the absence of a term commitment for no less than 3 DS3s worth of demand. *See In the Matter of Special Access rates for Price Cap Local Exchange Carriers,* WC Docket No. 05-25, RM-10593, Declaration of Ajay Govil on Behalf of XO Communications, LLC, at 6-11 (filed Aug. 8, 2007).

Chris Moore
John Hunter
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Jeremy Miller
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Ms. Marlene Dortch
October 30, 2007
EXHIBIT A

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EXHIBIT A			
MSA	**Verizon's Number of Qwest Lit Buildings**	**Qwest's Wholesale List of On-Net Buildings[1]**	**GeoResults' Number of Qwest Lit Buildings**
Boston	[redacted]	76	7
New York	[redacted]	64	14
Philadelphia	[redacted]	42	24
Pittsburgh	[redacted]	13	4
Providence	[redacted]	0	0
Virginia Beach	[redacted]	0	4
Total	[redacted]	195	53

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[1] These figures include carrier hotels, as well as addresses to which Qwest makes available no DS0, DS1 or DS3 services. If these addresses were backed-out, the totals would be substantially lower.